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38 CFR Ch. I (7–1–11 Edition)

HOSPITALIZATION ADJUSTMENTS

§ 3.551 Reduction because of hospitalization.

(a) *General.* Pension is subject to reduction as specified below when a veteran who has neither spouse, child nor dependent parent is hospitalized, unless the veteran is hospitalized for Hansen's disease. The provisions of this section apply to initial periods of hospitalization and to readmissions following discharge from a prior period of hospitalization. If the veteran is hospitalized for observation and examination, the date treatment began is considered the date of admission. Special rules governing discontinuance of aid and attendance allowance are contained in § 3.552. Except as otherwise indicated the terms "hospitalized" and "hospitalization" in §§ 3.551 through 3.556 mean:

(1) Hospital treatment in a Department of Veterans Affairs hospital or in any hospital at Department of Veterans Affairs expense.

(2) Institutional, domiciliary or nursing home care in a Department of Veterans Affairs institution or domiciliary or at Department of Veterans Affairs expense.

(Authority: 38 U.S.C. 5503(a))

(b) *Old-law pension.* (1) Old law pension in excess of \$30 monthly for a veteran who has neither spouse, child nor dependent parent shall continue at the full monthly rate until the end of the sixth calendar month following the month of admission for hospitalization. The rate payable will be reduced effective the first of the seventh calendar month to \$30 monthly or 50 percent of the amount otherwise payable, whichever is greater. The reduced rate will be effective the first day of the seventh calendar month following admission. Payment of the amount withheld may be made on termination of hospitalization, as provided in § 3.556. (Sec. 306(b))

(2) *Readmission following regular discharge.* Where a veteran has been given an approved discharge or release, readmission the next day to the same or any other VA institution begins a new period of hospitalization, unless the veteran was released for purposes of admission to another VA institution.

(3) *Readmission following irregular discharge.* When a veteran whose award is subject to reduction under this paragraph has been discharged or released from a VA institution against medical advice or as a result of disciplinary action, reentry within 6 months from the date of previous admission constitutes a continuation of that period of hospitalization and the award will not be reduced prior to the first day of the seventh calendar month following the month of original admission, exclusive of authorized absences. Reentry 6 months or more after such discharge or release shall be considered a new admission.

(Authority: 38 U.S.C. 5503(a))

(c) *Section 306 pension.* (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is being furnished hospital, nursing home or domiciliary care by the Department of Veterans Affairs, no pension in excess of \$50 monthly shall be paid to or for the veteran for any period after the end of the second full calendar month following the month of admission for such care.

(Authority: 38 U.S.C. 5503(a))

(2) No pension in excess of \$50 monthly shall be paid to or for a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within 6 months of a period of care for which pension was reduced under paragraph (c) (1) of this section.

(Authority: 38 U.S.C. 5503(a))

(3) Where section 306 pension is being paid to a married veteran at a rate for a veteran without dependents all or any part of the monthly amount of pension withheld in excess of \$50 may be apportioned for a spouse as provided in § 3.454(b).

(d) *Improved pension prior to February 1, 1990.* (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and

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is receiving pension as a veteran without dependents, is being furnished domiciliary care by VA, no pension in excess of \$60 monthly shall be paid to or for the veteran for any period after the end of the second full calendar month following the month of admission for such care. (38 U.S.C. 5503(a))

(2) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is furnished hospital or nursing home care by VA, no pension in excess of \$60 monthly shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care. (38 U.S.C. 5503(a))

(3) No pension in excess of \$60 monthly shall be paid to or for a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within 6 months of a period of care for which pension was reduced under paragraph (d)(1) or (2) of this section. (38 U.S.C. 5503(a))

(4) Where improved pension is being paid to a married veteran at the rate prescribed by 38 U.S.C. 1521(b) all or any part of the rate payable under 38 U.S.C. 1521(c) may be apportioned for a spouse as provided in §3.454(b). (38 U.S.C. 5503(a))

(5) The provisions of paragraphs (d)(1), (2), and (3) of this section are not applicable to any veteran who has a child, but is receiving pension as a veteran without a dependent because it is reasonable that some part of the child's estate be consumed for the child's maintenance under 38 U.S.C. 1522(b).

(6) For the purpose of paragraphs (d)(1), (2), and (3) of this section, if a veteran is furnished hospital or nursing home care by VA and then is transferred to VA-furnished domiciliary care, the period of hospital or nursing home care shall be considered as domiciliary care. Similarly, if a veteran is furnished domiciliary care by VA and then is transferred to VA-furnished hospital or nursing home care, the period of domiciliary care shall be considered hospital or nursing home care.

(e) *Improved pension after January 31, 1990.* (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is furnished domiciliary or nursing home care by VA, no pension in excess of \$90 monthly shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care.

(Authority: 38 U.S.C. 5503(a))

(2) No pension in excess of \$90 monthly shall be paid to a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within six months of a period of domiciliary or nursing home care for which pension was reduced under paragraph (e)(1) of this section.

(3) Where improved pension is being paid to a married veteran at the rate prescribed by 38 U.S.C. 1521(b) all or any part of the rate payable under 38 U.S.C. 1521(c) may be apportioned for a spouse as provided in §3.454(b).

(Authority: 38 U.S.C. 5503(a))

(4) For the purposes of paragraph (e)(1) of this section, if a veteran is furnished hospital care by VA and then is transferred to VA-furnished nursing home or domiciliary care, the period of hospital care shall not be considered as nursing home or domiciliary care. Transfers from VA-furnished nursing home or domiciliary care to VA-furnished hospital care then back to nursing home or domiciliary care shall be considered as continuous nursing home or domiciliary care provided the period of hospitalization does not exceed six months. Similarly, if a veteran is transferred from domiciliary or nursing home to a VA hospital and dies while so hospitalized, the entire period of VA care shall be considered as domiciliary or nursing home care. Nursing home or domiciliary care shall be considered as terminated effective the date of transfer to a VA hospital if the veteran is completely discharged from

VA care following the period of hospitalization or if the period of hospitalization exceeds six months.

(5) Effective February 1, 1990, reductions of improved pension based on admissions or readmissions to VA hospitals or any hospital at VA expense shall no longer be made except when required under the provisions of 38 CFR 3.552.

(6) The provisions of paragraphs (e)(1) and (2) of this section are not applicable to any veteran who has a child, but is receiving pension as a veteran without a dependent because it is reasonable that some part of the child's estate be consumed for the child's maintenance under 38 U.S.C. 1522(b).

(f) *Computation of period.* For purposes of computing periods of hospitalization in paragraph (c) of this section, authorized absences of 96 hours or less will be included as periods of hospitalization, and those of over 96 hours excluded. Also, for purposes of that paragraph, periods of treatment or care of 60 total days will be considered two calendar months of hospitalization and periods of 90 total days considered three calendar months, exclusive of authorized absences in excess of 96 hours.

(g) *Proof of dependents.* The veteran will be considered to have neither spouse, child nor dependent parent in the absence of satisfactory proof. Statements contained in the claims folder concerning the existence of such dependents will be considered a prima facie showing. If the necessary evidence is not received: (1) Within 60 days after the date of request where the award is subject to reduction under paragraph (b) of this section, or (2) prior to the effective date of reduction under paragraph (c) of this section, the veteran's award will be reduced on the basis of no dependents. The full rate may be authorized from the date of reduction if the necessary evidence is received within 1 year after the date of request.

(h) *Hospitalization*—(1) *General.* The reduction required by paragraphs (d) and (e), except as they refer to domiciliary care, shall not be made for up to three additional calendar months after the last day of the third month referred to in paragraphs (d)(2) or (e)(1) of this section, or after the last day of the

month referred to in paragraphs (d)(3) or (e)(2) of this section, under the following conditions:

(i) The Chief Medical Director, or designee, certifies that the primary purpose for furnishing hospital or nursing home care during the additional period is to provide the veteran with a prescribed program of rehabilitation under chapter 17 of title 38, United States Code, designed to restore the veteran's ability to function within the veteran's family and community; and

(ii) The veteran is admitted to a Department of Veterans Affairs hospital or nursing home after October 16, 1981.

(2) *Continued hospitalization for rehabilitation.* The reduction required by paragraph (d) or (e) of this section shall not be made for periods after the expiration of the additional period provided by paragraph (h)(1) of this section under the following conditions:

(i) The veteran remains hospitalized or in a nursing home after the expiration of the additional period provided by paragraph (h)(1) of this section; and

(ii) The Chief Medical Director, or designee, certifies that the primary purpose for furnishing continued hospital or nursing home care after the additional period provided by paragraph (h)(1) of this section is to provide the veteran with a program of rehabilitation under chapter 17 of title 38, United States Code, designed to restore the veteran's ability to function within the veteran's family and community.

(3) *Termination of hospitalization for rehabilitation.* Pension in excess of \$60 monthly or \$90, if reduction is under paragraph (e)(1) payable to a veteran under this paragraph shall be reduced the end of the calendar month in which the primary purpose of hospitalization or nursing home care is no longer to provide the veteran with a program of rehabilitation under chapter 17 of title 38, United States Code designed to restore the veteran's ability to function within the veteran's family and community.

(Authority: 38 U.S.C. 5503(a))

(i) *Certain veterans and surviving spouses receiving Medicaid-covered nursing home care.* Effective November 5, 1990, and terminating on September 30, 2011, if a veteran having neither spouse

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nor child, or a surviving spouse having no child, is receiving Medicaid-covered nursing home care, no pension or death pension in excess of \$90 per month shall be paid to or for the veteran or the surviving spouse for any period after the month in which the Medicaid payments begin. A veteran or surviving spouse is not liable for any pension paid in excess of the \$90 per month by reason of the Secretary's inability or failure to reduce payments, unless that inability or failure is the result of willful concealment by the veteran or surviving spouse of information necessary to make that reduction.

(Authority: 38 U.S.C. 5503)

CROSS REFERENCES: Time limits. See § 3.109. Apportionment. See § 3.400(e). Reductions and discontinuances; general. See § 3.500. Incompetents; resumption. See § 3.558.

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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 3.551, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 3.552 Adjustment of allowance for aid and attendance.

(a)(1) When a veteran who is already entitled to the aid and attendance allowance is hospitalized, the additional compensation or increased pension for aid and attendance shall be discontinued as provided in paragraph (b) of this section except as to disabilities specified in paragraph (a)(2) of this section. (See paragraph (k) of this section for rules applicable to a veteran who establishes entitlement to the aid and attendance allowance on or after date of admission to hospitalization).

(2) The allowance for aid and attendance will be continued during hospitalization where the disability is paraplegia involving paralysis of both lower extremities together with loss of anal and bladder sphincter control, or Hansen's disease, except where discontinuance is required by paragraph (b)(2) of this section. In addition, in pension cases only, the aid and attendance allowance will be continued where the pensionable disability is blindness (visual acuity $\frac{5}{200}$ or less) or concentric contraction of visual field to 5 degrees or less. Awards are, however, subject to the provisions of § 3.551 (except where

the disabling condition is Hansen's disease).

(3) Additional compensation for dependents under § 3.4(b)(2) is payable during hospitalization in addition to the rates authorized by this section. The rates specified will also be increased by amounts authorized under 38 U.S.C. 1114(k) based on independently ratable disability, subject to the statutory ceiling on the total amount of compensation payable as set forth in § 3.350(a).

(b)(1) Where a veteran is admitted for hospitalization on or after October 1, 1964, the additional compensation or increased pension for aid and attendance will be discontinued effective the last day of the month following the month in which the veteran is admitted for hospitalization at the expense of the Department of Veterans Affairs.

(2) When a veteran is hospitalized at the expense of the United States Government, the additional aid and attendance allowance authorized by 38 U.S.C. 1114(r) (1) or (2) will be discontinued effective the last day of the month following the month in which the veteran is admitted for hospitalization.

(3) Where a veteran affected by the provisions of paragraph (b) (1) and (2) or paragraph (k) of this section is discharged or released from the hospital against medical advice or as the result of disciplinary action, and is readmitted to such hospitalization within 6 months after that date, the allowance, additional compensation, or increased pension will be discontinued effective the day preceding the date of readmission. A readmission 6 months or more after such discharge or release will be considered as a new admission.

(Authority: 38 U.S.C. 5503(e))

(c) Reduction will not be made where the same monthly rate of compensation would be payable without consideration of need for regular aid and attendance. This can only be determined after careful review of the current maximum entitlement without regard to any amount for aid and attendance.

(d) Where entitlement by reason of need for regular aid and attendance is the basis of the monthly rate under 38 U.S.C. 1114(1) the award will be reduced